

SERVED: August 29, 1996

NTSB Order No. EA-4477

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 13th day of August, 1996

_____	)	
DAVID R. HINSON,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-14258
v.	)	
	)	
TAD EMERY LONERGAN, M.D.,	)	
	)	
Respondent.	)	
_____	)	

**OPINION AND ORDER**

Respondent has appealed from the oral initial decision of Administrative Law Judge Patrick G. Geraghty, issued on November 29, 1995, following an evidentiary hearing.<sup>1</sup> The law judge affirmed an emergency order of revocation issued by the

<sup>1</sup> The initial decision, an excerpt from the hearing transcript, is attached.

Administrator, on finding that respondent had violated 14 C.F.R. 67.20(a)(1).<sup>2</sup> We deny the appeal.

Respondent's appeal is based on one allegation of procedural error: the law judge declined a request for a continuance of at least 60 days, even though the request was accompanied by a waiver of the decisional deadline applicable to emergency cases. Respondent sought the extension shortly after the Administrator's complaint was filed, claiming that counsel was unavailable on the proposed hearing date, that judicial actions in a pending criminal matter could bear on the result in this case, that the Administrator had no objection to the continuance, and that it would "enable all parties to be best able to present their case with all available facts." After the law judge denied the request, respondent asked him either to reconsider his ruling or to allow an interlocutory appeal. Those alternative requests were also denied.

Respondent's counsel was able to appear at the evidentiary hearing, although respondent did not. The law judge concluded that respondent had intentionally falsified his July 6, 1993 medical application by answering "no" to the question of

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<sup>2</sup> Section 67.20(a)(1) reads:

(a) No person may make or cause to be made--

(1) Any fraudulent or intentionally false statement on any application for a medical certificate under this part[.]

"History of other [than motor vehicle] conviction(s) (misdemeanors or felonies)" when respondent had been convicted in 1988 of a felony in connection with improperly prescribing controlled substances.

Regardless of whether we agree with his stated reasons, the law judge has considerable discretion in this matter and we can not find he abused that discretion. As the Administrator has pointed out in his reply, nothing raised by the respondent prior to or at the hearing need have affected the outcome of the hearing so as to warrant delay. Counsel was able to appear. The pending appeal in the criminal case was irrelevant: the issue before the law judge was not the validity or status of the criminal conviction in 1995, but whether respondent, in 1993, intentionally answered "no" to the question about criminal convictions when he should have answered "yes."<sup>3</sup> Thus, the law judge could reasonably have concluded that this argument offered no legitimate reason to delay the proceeding.

The only argument offered by respondent in his correspondence with the law judge that purported to address the quality of the presentation he would be able to offer at the hearing absent the sought continuance was a general one,

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<sup>3</sup> And, even if the conviction were relevant, a pending appeal of it does not necessitate a delay in the Administrator's proceeding. Administrator v. Manning, NTSB Order No. EA-4363 (1995) at 4.

presenting no specifics for the law judge to consider.

Respondent's request for reconsideration was similarly vague.

At the hearing, respondent's counsel for the first time argued that respondent's own inability to attend the hearing warranted a continuance. But, counsel later withdrew that reason.<sup>4</sup> Respondent may not now revive that issue, as he attempts to do ("The limited issue is whether or not Respondent is entitled to present evidence on his behalf at a hearing...". Brief at 6).

Finally, the information respondent now offers by way of testimonials to respondent's character does not in any way undermine the law judge's findings, even if there were an explanation as to why this material could not have been produced at the hearing. A showing of intentional falsification is a serious offense which in virtually all cases the Administrator imposes and the Board affirms revocation. Administrator v. Rea, NTSB Order EA-3467 (1991), citing Administrator v. Cassis, 4 NTSB 555 (1982), reconsideration denied, 4 NTSB 562 (1983), aff'd,

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<sup>4</sup> Counsel stated: "My request for a continuance is not based upon Dr. Lonergan's meeting with State Senator Kelly. That was only for the record." Tr. at 9. Soon after, counsel and the law judge had the following conversation:

Judge Geraghty: Well, let me put it this way, Mr. Graff, he asked for this hearing. If he thinks the meeting with the Senator is more important, that's his choice.

Mr. Graff: Absolutely correct, your Honor, but that is not the basis for the request for a continuance.

Cassis v. Helms, Admr., FAA, et al, 737 F.2d 545 (6th Cir. 1984).

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The initial decision is affirmed.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.